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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------|---------------------|------------------|
| 10/082,562 | 02/23/2002 | Christopher P. Townsend | 115-002 | 3189 |
| 26542 | 7590 | 04/27/2004 | EXAMINER | |
| JAMES MARC LEAS 37 BUTLER DRIVE S. BURLINGTON, VT 05403 | | | COHEN, AMY R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2859 | |

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------|-------------------------------|---------------------------------|--|
| Advisory Action | Application No. 10/082,562 | Applicant(s) TOWNSEND ET AL. | |
| | Examiner Amy R Cohen | Art Unit 2859 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal ~~under~~ (see Note below); and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Proposed claim 69 is an incomplete claim.

3. ☒ Applicant's reply has overcome the following rejection(s): 102 rejection of claims 1, 3-39
4. ☒ Newly proposed or amended claim(s) 1, 3-39 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 3-41 and 43-106.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

Continuation of 10. Other: Regarding claim 1 and its dependent claims: Examiner agrees with the remarks in the proposed amendment and the rejection would be overcome, and the claims allowable. Reasons for allowance are that the prior art does not disclose or suggest a device wherein said first sensor for attaching to a first body segment above the joint, said second sensor for attaching to a second body segment below the joint and wherein inclinations with respect to gravity vector determined are processed in said processor. Regarding claim 40: Examiner states that the rejection is proper since the feedback mechanism is contained within the host computer of the Hansen patent. Using the algorithms as stated in Col 5, lines 8-34 and the data recreated in the host computer constitutes a feedback mechanism which is able to provide information in response to multiple points of time dependent output indicating inactivity, as claimed by the Applicant. Since the last 6 lines of claim 40 are given in the alternative, the device need only be capable of performing one, but not all of the functions listed in the claims and argued in the remarks by Applicant.

Regarding claim 69: The proposed amendment renders claim 69 an incomplete claim and therefore, the amendment cannot be entered.

Regarding claim 83: The device of Hansen is capable of performing "determining a curvature of a spine;" even though it does not explicitly disclose performing this function. Also, it is unclear as to how one would determine a curvature of a spine having only one sensor, as claimed by Applicant. It is also noted that "for determining a curvature of the spine" is considered intended use of the device.

Regarding claim 99: Applicant's remarks regarding the feedback mechanism are addressed in response to claim 40.